

Letter of Findings: 02-20120038P
Corporate Income Tax
For the Years 2001, 2002, 2003, 2004, 2005, and 2007

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ISSUE

I. Tax Administration – Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests abatements of penalty assessments for tax years 2001, 2002, 2003, 2004, 2005, and 2007.

STATEMENT OF FACTS

Taxpayer, who was incorporated in Indiana in 2001, elected to be treated as an S Corporation in 2009. The records of the Indiana Department of Revenue ("Department") show that Taxpayer did not file its corporate income tax returns for tax years 2001, 2002, 2003, 2004, 2005, and 2007. In 2011, the Department assessed Taxpayer a \$250 penalty for each tax year which Taxpayer failed to file its corporate income tax returns. Taxpayer protests the assessments and requests that the Department abate the penalty.

Upon receiving Taxpayer's request, the Department conducted a phone hearing in which Taxpayer explained the basis for its request that the Department abate the penalties. Subsequently, Taxpayer submitted additional documentation to support its protest. Thus, this Letter of Findings is written based on the phone hearing with Taxpayer, the documentation submitted by Taxpayer, and information available within Taxpayer's protest file. Additional information will be provided as necessary.

I. Tax Administration – Penalty.

DISCUSSION

The Department assessed Taxpayer negligence penalty because Taxpayer failed to timely file its returns for tax years 2001, 2002, 2003, 2004, 2005, and 2007. Taxpayer first claimed that it was not "aware of the need to file form IT-20 until [it] pursued a Certificate of Clearance for Reinstatement as an Indiana corporation." Taxpayer also asserted that the penalty "would place [its] business in severe hardship."

IC § 6-8.1-10-2.1(g) provides:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayer maintained that it "was non-active and received no income for the period of 2001-2005." In addition, to support its protest, Taxpayer submitted copies of its 2011 federal and Indiana returns and its February 2012 bank statement, asserting that the penalty "would place [its] business in severe hardship." However, upon reviewing Taxpayer's documentation, its documentation demonstrates that Taxpayer was formed to be (and since 2006 has been) in the business of providing payroll services, which include filing the required federal and state returns on behalf of its customers. Taxpayer thus should have known that it was required to file its corporate income tax returns.

As mentioned above, "[i]gnorance of the listed tax laws, rules and/or regulations is treated as negligence." In the absence of other sufficient documentation, the Department is not able to agree that Taxpayer has demonstrated reasonable cause for waiver of negligence penalty. Thus, Taxpayer's request is respectfully denied.

FINDING

Taxpayer's protest of the imposition of penalty is respectfully denied.

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